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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

To: The Commission

PETITION FOR RECONSIDERATION

THE COUNTY OF LOS ANGELES,
CALIFORNIA

Robert M. Gurss
Rudolph J. Geist
WILKES, ARTIS, HEDRICK & LANE,
Chartered
1666 K Street, N.W. #1100
Washington, D.C. 20006
(202) 457-7800

Its Attorneys

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SUMMARY

The Commission's digital television (DTV) channel allotment plan generally avoids use of TV channels 60-69 (746-806 MHz), creating an opportunity to reallocate 24 MHz of that spectrum for immediate public safety use. Such an allocation is consistent with the recommendations of the Public Safety Wireless Advisory Committee ("PSWAC") and recently proposed legislation. The County fully supports this reallocation approach, and urges that the Commission move forward as quickly as possible to complete the reallocation of 24 MHz for immediate public safety use in the 746-806 MHz band.

However, the DTV allotment plan adopted in this proceeding needs to be revised to address the special problems of Southern California. The plan includes six channel 60-69 DTV allotments in the Los Angeles area (there are only 15 such DTV allotments nationwide). When combined with three Los Angeles area analog (NTSC) channels in the band, that will preclude public safety use of the 746-806 MHz band until the end of the DTV transition.

Los Angeles area public safety agencies are in dire need of new radio spectrum allocations to alleviate congestion, promote interoperability among agencies, and permit implementation of new public safety communications technologies. Indeed, the spectrum shortages facing Los Angeles were a model for the spectrum needs analysis in the PSWAC report. Thus, the delayed public safety use of channels 60-69 for Los Angeles is contrary to the public interest, and violates Section 307(b) of the Communications Act which requires "fair, efficient, and equitable distribution of radio service" throughout the nation.

The Commission must reconsider and revise its DTV allotment plan for the Los Angeles area. The Commission should modify its programs used to develop the plan to provide a greater "penalty" for using channel 60-69 for DTV, and consider the impact of terrain shielding to permit greater channel re-use. The Commission should also eliminate use of channel 69 for DTV in Los Angeles, which in any event poses a threat of interference to current land mobile operations in the 800 MHz band. If necessary, the Commission should also explore modifications to its transition schedule and develop incentives to encourage a more rapid DTV transition and clearing of all remaining broadcast operations in channels 60-69.

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PETITION FOR RECONSIDERATION

The County of Los Angeles ("County"), by its attorneys, and pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, hereby submits the following Petition for Reconsideration of those portions of the Commission's Fifth Report and Order and Sixth Report and Order in the above-captioned "Advanced Television Systems" proceeding, FCC Nos. 97-116 and 97-115, released April 21, 1997, 62 FR 26684 (May 14, 1997), 62 FR 26922 (May 16, 1997) dealing with the allotment of digital television (DTV) channels to the Los Angeles County area.

Specifically, the County requests that the Commission reconsider its decision to allot six DTV allotments in channels 60-69 in Southern California. These DTV allotments, combined with allotments of existing analog (NTSC) stations on channels 60-69, practically precludes the immediate use of spectrum for vital public safety use in the Los Angeles area, in

direct contrast to the Commission's announced intention to reallocate 24 MHz for immediate public safety use in the band nationwide.¹

INTRODUCTION & BACKGROUND

The County has population of over 9 million citizens in an area of about 4,000 square miles that includes such varied terrain as the densely populated Los Angeles Basin, mountain peaks and valleys, islands, and deserts. The County's public safety agencies, including the Sheriff's Department, Fire Department, and Emergency Medical Services Agency, are heavily dependent upon highly sophisticated communications systems. The County operates extensive wide-area land-mobile radio systems for its operations which utilize frequencies in the UHF, VHF, and 800 MHz bands.

In both comments and reply comments in this proceeding, the County strongly supported the Commission's plan to reallocate UHF Television channels 60-69, so as to make a portion of that spectrum immediately available for use by public safety agencies.² The County's comments stressed that the Commission must make at least 24 MHz of spectrum available for public safety use in the next five years in Los Angeles to properly implement

¹ To the extent that the FCC is unable to eliminate the DTV allotments in Los Angeles, the County urges the Commission to reconsider portions of the Fifth Report and Order which establishes the time period and transition process for DTV channels and the recovery of NTSC spectrum. If 24 MHz cannot be made available immediately, the Commission at the minimum has an obligation to speed the recovery of all interim DTV allotments in the channel 60-69 band in Los Angeles to facilitate the availability of 24 MHz for public safety use as quickly as possible.

² In addition, in a May 22, 1997, letter to Chairman Hundt, Sherman Block, Sheriff of Los Angeles County, detailed the County's concerns over the potential public safety ramifications of the Commission's DTV allotment decision for Southern California, and expressed the County's intentions to seek this reconsideration.

recent recommendations of the Public Safety Wireless Advisory Committee (“PSWAC”). Personnel from the County Sheriff’s Department, Fire Department, and Internal Services Department were active participants in the PSWAC process, and Los Angeles County Fire Chief Michael Freeman was an appointed member of the PSWAC Steering Committee.

In the Sixth Report and Order, the Commission adopted a DTV channel plan that generally avoids any use of channels 60-69, in part due to its recognition that there is a clear need for “additional spectrum . . . to meet the needs of public safety,”³ and that the spectrum from channels 60-69 could be used to satisfy a portion of that need. The Commission further announced that it will soon initiate a rulemaking proceeding to examine the issue of reallocation of this spectrum for public safety use. Sixth Report and Order, ¶ 79.

In constructing its DTV allotment table, therefore, the Commission determined to avoid the placement of any DTV channels outside of the “core” broadcast spectrum area, and especially between channels 60-69. Id. at ¶ 79-85. In accord with this goal, the Commission reduced the number of DTV stations in the 60-69 band nationwide from over thirty, as proposed in the Sixth Further Notice of Proposed Rulemaking, to just fifteen. Sixth Further Notice of Proposed Rulemaking, MM Docket No. 87-268, FCC 96-317, released August 14, 1996, at Appendix B. Unfortunately, however, four of the fifteen 60-69 DTV channel allotments are in Los Angeles, and two more are in the nearby communities of Riverside and San Bernardino. The resulting impact on Los Angeles County is highly unfair and is disproportionate to the way in which other metropolitan areas were treated. By allotting 40% of the fifteen 60-69 band interim DTV allotments to just one area, the Commission has

³ See also Separate Statements of Chairman Hundt, Commissioner Quello, Commissioner Ness, and Commissioner Chong.

completely foreclosed its ability to make available any new spectrum from this band, let alone 24 MHz, for public safety use in the Los Angeles area until the end of the DTV transition process, many years from now. This gross imbalance is a blatant violation of the basic precepts of Section 307 of the Communications Act which requires the Commission to allocate channels so as to achieve a fair and equitable distribution of services among the several states and communities of the United States.

The County applauds the Commission's overall efforts to make new spectrum available for public safety use on a nationwide basis. The allocation of 24 MHz of new spectrum will provide substantial opportunities for public safety agencies to enhance and expand their currently congested systems, promote critical interoperability between agencies, and deploy new technologies to assist them in their job of protecting life and property. Los Angeles, however, cannot be left entirely out of the picture. As it has done nationwide, the Commission must work to provide that the benefits of public safety operation in the channel 60-69 range are promptly realized, rather than being postponed to the end of the DTV transition. Therefore, the County urges the Commission to reconsider its actions for the reasons set forth herein.

I. ALTHOUGH LOS ANGELES HAS THE GREATEST NEED FOR NEW SPECTRUM, NONE WILL BE MADE AVAILABLE UNLESS THE EXISTING ALLOTMENT TABLE IS MODIFIED

The public safety spectrum needs relied upon by the Commission in the Sixth Report and Order are based upon the findings and recommendations of Public Safety Wireless Advisory Committee ("PSWAC"). PSWAC Final Report, September 1996. PSWAC and its subcommittees conducted a detailed quantitative analysis of future public safety spectrum

requirements and determined that approximately 25 MHz of additional spectrum must be made available for public safety use within five years (i.e., by September 2001), with an additional 70 MHz required by the year 2010. PSWAC also determined that the most appropriate source for the approximately 25 MHz of spectrum would be from the 60 MHz of spectrum now used for UHF TV channels 60-69. PSWAC Final Report, September 1996, Vol. I, at 3. Ironically, the quantitative analysis that led to the PSWAC findings was based on a study of the Los Angeles metropolitan area. See PSWAC Final Report, Vol. II, Appendix D, at 7, 54. The conclusions regarding spectrum needs rested on the assumption that if an area such as Los Angeles could be satisfied with the projected amount of spectrum, all other areas would be satisfied with that same amount of new spectrum.

Even before the PSWAC analysis, the serious spectrum shortages facing public safety agencies in the Los Angeles area had been well-documented and recognized by the Commission.⁴ The Commission found that:

Because of the climate and geological conditions, the region is prone to natural disasters such as forest wildfires, floods, mud-slides, earthquakes, high winds, high waves and tornados. The [Los Angeles area] has the highest concentration of automobiles in the world along with a vast network of freeways As a manufacturing center, the Los Angeles area has experienced industrial disasters, including fires and hazardous chemical spills. These factors, among others, place severe demands on agencies involved with public safety in and around Los Angeles County. Moreover, these factors coupled with the general

⁴ Additional Channels in the Band 470-512 MHz for Public Safety, Gen. Docket 84-902, 59 RR 2d 910, 51 Fed. Reg. 4352 (1986) (reallocating UHF Channel 16 for public safety in Los Angeles); In the Matter of Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services, CC Docket 87-120, 4 FCC Rcd. 6415 (1989) (reallocating an additional 17 channel pairs in UHF Channels 14 and 20 for public safety in Los Angeles).

spectrum congestion present in the Los Angeles basin, place heightened demands on public safety communications systems.⁵

In 1984, the Commission's Private Radio Bureau conducted a study suggesting that an additional 44.6 MHz of spectrum would be needed in the Los Angeles/San Diego area by the year 2000.⁶ In response, only 12 MHz have been made available in Los Angeles, 6 MHz as part of a national public safety spectrum allocation in the 800 MHz band, and 6 MHz from a special allocation of UHF channel 16 for exclusive public safety use in Los Angeles. However, even with those allocations, the Los Angeles area is still far short of the FCC's 1984 projections, let alone the more recent PSWAC projections.

Although PSWAC recognized Los Angeles as the model for regions desperately in need of new spectrum for these reasons, the Commission's new DTV allotment places six DTV (6) channels in the Los Angeles area, in addition to three (3) existing NTSC channels, thereby effectively eliminating any possibility that new spectrum will be made available to public safety agencies in the area:

⁵ 59 RR 2d at 912.

⁶ FCC Private Radio Bureau "Future Public Safety Telecommunications Requirements," PR Docket No. 84-232, 49 Fed. Reg. 9754 (Mar. 15, 1984).

<u>Community of License</u>	<u>Existing 60-69 Channel</u>	<u>DTV Allotment in 60-69</u>
Riverside	62	69
Oxnard	63	
Barstow	64	
Los Angeles		60
San Bernardino		61
Los Angeles		65
Los Angeles		66
Los Angeles		68

Each of the stations listed above has, or will have, Grade A coverage over some or all of Los Angeles County. Although channel 67 is not allotted in the area, there would appear to be a significant potential for adjacent channel interference to land mobile operations from new DTV channels 66 and 68. Therefore, all ten channels would appear to be unavailable for public safety use until the end of the DTV transition.

II. THE LOS ANGELES AREA ALLOTMENT PLAN VIOLATES SECTION 307 (b) OF THE COMMUNICATIONS ACT OF 1934

Section 307 (b) of the Communications Act of 1934, 47 U.S.C. § 307(b), mandates that:

In considering applications for license, modifications, and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and power among the several States and communities as to provide a fair efficient,

and equitable distribution of radio service to each of the same. [emphasis added)

The Section 307(b) mandate has been broadly interpreted by the Commission to apply in general rulemaking proceedings regarding the overall establishment of nationwide allotment plans, as well as to specific allocation and licensing proceedings.⁷

The present Los Angeles area DTV allotment plan is a blatant violation of the basic precepts of Section 307(b). On one hand, the area has received a heavy preponderance (6 out of the 15 nationwide) of the disfavored interim DTV allotments in channels 60-69. This alone is a sufficiently gross imbalance compared to the remainder of the country to raise a serious question under Section 307(b).

And on the other hand, when the corresponding adverse impact on public safety allocations in the band is additionally considered, the plan crosses all boundaries of reasonableness. Because of the excessive allotment of disfavored DTV 60-69 allotments, it will be impossible for Los Angeles to obtain any new usable public safety channels in the channel 60-69 band until the end of the DTV transition process. Los Angeles, generally acknowledged to be the area most in need of immediate additional public safety spectrum, receives no relief whatsoever, in stark contrast to the general nationwide allotment plan. A fair DTV allotment would have spread the channel 60-69 allotments more evenly, in a manner that would allow four channels (i.e., 24 MHz) to be reallocated and used nationwide for public safety.

⁷ See, e.g., Television Assignments, 41 FCC 148 (1952); Establishment of Domestic Communications Satellite Facilities, 34 FCC 2d 9 (1972).

In making its DTV allotments pursuant to Section 307 (b), the Commission must ensure that the allotments “among the several States and communities . . . provide a fair, efficient, and equitable distribution of radio services to each of the same.” 47 U.S.C. 307 (b). Furthermore, in a situation such as exists here, where the allotment of one radio service, i.e., DTV, has a direct impact on the allotment of another radio service, i.e., public safety channels, Section 307 (b) requires that “the Commission shall make such distribution . . . among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”

In making this argument, it is recognized that the Commission has previously held that the Section 307(b) mandate does not apply to the licensing of land mobile radio stations. See Orange County Radiotelephone Service, Inc., 5 FCC 2d 848 (1966); ATS Mobile Telephone, Inc., 37 FCC 2d 273 (1972). Whether or not the Commission’s application of Section 307(b) in those cases is correct, such an interpretation clearly has no application to the issues involved in this proceeding. First, this is a proceeding affecting both the allotment of broadcast and non-broadcast channels in which the allotment issues are inherently intertwined. Certainly, the Commission cannot apply 307(b) considerations to one side of the equation and not to the other.

Second, in its reasoning in those cases that the Section 307(b) mandate does not apply to non-broadcast services, the Commission incorrectly interpreted the legislative history of Section 307(b) and avoided the plain meaning of the statute.⁸ The Commission assumed that

⁸ In its analysis, the Commission cites to provisions in the Radio Act of 1927 that were “enacted to remedy the chaotic broadcast situation,” and which were “carried into” the 1934 Act. See Orange County Radiotelephone Service, Inc., 5 FCC 2d 848, 850 (1966).

because Congress had AM radio in mind when it adopted 307(b), the provision does not apply to non-broadcast services. Yet, on its face, Section 307(b) and, indeed, all of Title III of the Act, applies to all licensed uses of the radio spectrum.⁹ When the statute was passed there existed only one radio frequency type - AM radio. Congress surely did not envision that every radio service which followed AM radio would not be included under the statute's coverage. Further, if the Commission's reading of the legislative history were correct, then Congress could not possibly have intended to include either FM or broadcast television under the statute since neither of those services were in existence at the time of its passage. Therefore, the Commission's interpretation that Section 307 (b) does not cover non-broadcast services is fundamentally incorrect.

Third, even if the Commission were to cling to its position that Section 307(b) does not apply to non-broadcast services, that does not preclude the Commission's discretionary application of the principles of Section 307(b).¹⁰ Indeed, the public interest, and Section 1 of the Communications Act, demands that the Commission make all of its spectrum allocation decisions "for the purpose of promoting safety of life and property." 47 U.S.C. § 151.

III. THE COMMISSION MUST REEVALUATE THE DTV ALLOTMENT TABLE TO CLEAR MORE SPECTRUM FOR SOUTHERN CALIFORNIA

As discussed above and in the PSWAC Report, nowhere is the need for more additional public safety spectrum greater than in the vast, densely populated Los Angeles

⁹ Had Congress meant to limit the breadth of Section 307 (b) to broadcast services, it would have placed word "broadcast" instead of "radio" in the statute.

¹⁰ Orange County, 5 FCC 2d at 850; ATS Mobile Telephone, Inc., 37 FCC 2d at 280.

metropolitan area. Yet, under the present DTV channel plan, it is the Los Angeles area which is least likely to receive any short-term benefit from the Commission's overall plan to reallocate 24 MHz from channels 60-69 for public safety. This discriminatory and illogical result requires the Commission to reexamine its DTV allotment decision regarding Southern California, and find a way to make new spectrum available to satisfy the needs of public safety. Among other options, the Commission should consider the following possibilities:

First, the Commission should rerun the program used to develop its Table of Allotments, giving specific local design preferences to the Southern California area, in order to free up more channels in 60-69. The Commission can do this by using the "simulated annealing" methodology to require stricter penalties than used in formulating the Table of Allotments for any DTV allotments to 60-69 in Southern California. By using stricter penalties and more specific local design preferences for Southern California, the Commission can reposition channels in other areas of the country so there are less resulting channel 60-69 DTVs in Southern California.

Second, the Commission should consider the impact of terrain in any potential DTV channel 60-69 repositioning. Southern California's mountainous terrain may permit certain shielding characteristics to be taken into consideration in a channel repositioning. For example, standard mileage separations have apparently prevented certain channels below channel 60 from being used for new DTV allotments in Los Angeles. However, a closer analysis may reveal that some of those lower channels can, in fact, be reused due to terrain shielding. That would then eliminate the need to allot channels 60-69 for DTV.

Third, the Commission should address the peculiar, and disruptive, allotment of channel 69 for DTV use by NTSC channel 62, KRCA-TV, Riverside, CA. Where is this

station to operate after the DTV transition? The current plan provides for it to tie up two valuable 60-69 channels indefinitely. The County also understands that the licensee of KRCA may be filing a petition for reconsideration based on its concern that operation of DTV channel 69 (800-806 MHz) in Southern California will not be possible without causing adjacent channel interference to existing 800 land mobile licensees. The Land Mobile Communications Council (LMCC) is also filing a Petition for Reconsideration on this issue. The County agrees, in part because it is one of the 800 MHz land mobile licenses that could be impacted, and also because this provides yet another reason not to use channel 69 for DTV in Los Angeles.¹¹

Fourth, the Commission must consider revising the transition periods adopted in the Fifth Report and Order. The Commission established a target date of 2006 for the recovery of all existing analog spectrum. This target date is to be reevaluated every two years by the Commission, and adjustments may be made as necessary. The Commission chose the established date because of a desire for a very fast transition and an accelerated recovery of existing NTSC spectrum and reallocation to new uses, including public safety. See Fifth Report and Order, ¶ 99. The Commission should consider modifying the rules, however, to require a firm, even shorter recovery deadline for NTSC and DTV stations located between channels 60-69 in Southern California. This will be particularly important if the Commission is unable to eliminate any of the DTV allotments as discussed above. At minimum, the Commission should adopt a very firm deadline so that public safety agencies can plan accordingly.

¹¹ The Commission should also re-examine the possibility of using VHF channel 12 for DTV in Los Angeles. While it would be adjacent to current analog channels 11 and 13, it could be nearly co-located, minimizing adjacent channel interference.

Fifth, the Commission should create incentives for Los Angeles stations with DTV allotments in channels 60-69 to negotiate channel swaps that would facilitate earlier release of the channel 60-69 spectrum in Southern California. In the Sixth Report and Order, the Commission decided to permit broadcasters to negotiate special allotment agreements between each other, under the presumption that private industry coordination efforts will help facilitate the process. Sixth Report and Order, ¶ 182. Therefore, the County proposes that the Commission consider formulating a mechanism to encourage negotiated station swaps to reduce use of channels 60-69 in Los Angeles.

Once such approach would be for the Commission to adopt a more aggressive transition date for stations operating on channels 60-69 in the Los Angeles area, but allow licensees of those stations to take advantage of the longer “standard” transition period if they negotiate a “swap” with another TV station outside the Los Angeles area. The terms and conditions of such a swap would be left to the negotiations. The areas to which the channel 60-69 allotments are switched are less likely to be areas with severe spectrum shortages for public safety use.

Finally, if the Commission is unable to solve the problem in Southern California utilizing any of the above-mentioned or other means, then some alternative public safety spectrum must be made available. Public safety agencies in Southern California cannot wait for the end of the DTV transition to obtain critical communications tools they need to protect the safety of life and property.

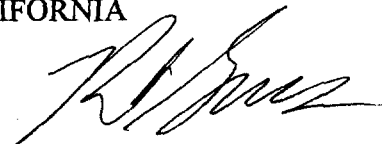
CONCLUSION

For the foregoing reasons, the County respectfully requests that the Commission reconsider its Sixth Report and Order and Fifth Report and Order in the above-captioned proceeding.

Respectfully submitted,

THE COUNTY OF LOS ANGELES,
CALIFORNIA

By:



Robert M. Gurss



Rudolph J. Geist

WILKES, ARTIS, HEDRICK & LANE,
Chartered
1666 K Street, N.W. #1100
Washington, D.C. 20006
(202) 457-7800

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